

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARTA COSME, JOSE A. LOPEZ, on
their behalf and that of their minor
daughter YANIRA LOPEZ-COSME
Plaintiffs

Civil No. 98-1551(SEC)

v.
PLAZA AQUATICA, INC.;
419 PONCE DE LEON, INC.;
AMERICAN INTERNATIONAL
INSURANCE COMPANY OF P.R.;
NORTH AMERICA SPECIALTY
INSURANCE COMPANY
Defendants

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MAGISTRATE-JUDGE'S REPORT AND RECOMMENDATION
ON MINOR'S SETTLEMENT CLAIM

I. Procedural Background

On May 19, 1998, plaintiffs Marta Cosme and José López, on their behalf and that of their minor daughter Yanira López-Cosme, filed an action for monetary damages for the emotional anguish and suffering experienced by López-Cosme and directly resulted from the physical injuries suffered by her mother. The action was brought against the following defendants: Plaza Aquatica, Inc.; 419 Ponce de León, Inc.; American International Insurance Company of P.R.; and North America Specialty Insurance Company. Damages are premised, as alleged by plaintiffs, in the negligent and wrongful acts or omissions of the defendants. The complaint alleges that on September 4, 1993, plaintiffs were invitees of Plaza Aquatica. While utilizing a floating device at an area named "Río Loco," the water current expelled plaintiff Marta Cosme from the floater and pushed/threw her against the wall. Due to such accident, Mrs. Cosme suffered back and spinal cord injuries and bruises all over her body.

Civil No. 98-1551(SEC)

Page No. 2

It is further alleged that plaintiff's injuries included: herniated cervical discs and three herniated lumbar discs. This accident precluded plaintiff from performing daily house chores, taking care of her elderly mother and minor daughter, and subjected her to continuous pain (**Docket No. 1**).

On February 22, 1999, plaintiffs moved for the dismissal of the action filed against American International Insurance Co. (**Docket No. 15**). Partial judgment in accordance with plaintiffs' request was issued on March 4, 1999 (**Docket No. 16**).

After carrying out discovery and investigation, on September 8, 1999, the parties petitioned for authorization to settle this action and submitted the proposed distribution of settlement amount (**Docket No. 24**).

The specific terms of the stipulation provide that the adult plaintiffs will receive the sum of \$183,000.00 (gross) and Yanira López-Cosme, now 20 years old, will receive \$2,000.00.

In exchange, plaintiffs waive all present and future claims resulting from such accident.

B. The Hearing

At the hearing on minor settlement claim, plaintiffs appeared represented by Attorney María Soledad Piñero. Minor Yanira López-Cosme was also represented by Attorney Vivian Acosta-Ruiz, Special Prosecutor for Family Affairs, Commonwealth Department of Justice, who evaluated all evidence available concerning the extent of the damages suffered by the minor and the propriety of the terms within the parties' stipulation.

Prior to the hearing, Attorney Acosta-Ruiz had met with Attorney Piñero and reviewed relevant documents and evidence on file. Attorney Acosta-Ruiz also examined the Court's case file.

Civil No. 98-1551(SEC)

Page No. 3

Attorney Acosta-Ruiz has recommended that the terms of the Stipulation and Settlement be approved inasmuch as the amount to be paid, based on her professional experience, was reasonably allocated to each party. In so determining, special consideration was given to the fact that plaintiff Yanira López-Cosme did not sustain physical injuries nor was ever in need of psychological treatment.

Attorney Acosta-Ruiz has further assessed that no amounts or attorney's fees will be deducted from the total compensation awarded to the minor.

All parties were advised of the terms and contents of the settlement stipulation. After having conducted the proper inquiry, this Magistrate-Judge finds that the plaintiffs are aware of the purpose of the evidentiary hearing, contents of the stipulation and final consequences of such an agreement.

C. Conclusion and Recommendation

Having examined the case record and listened to the parties, this Magistrate-Judge is convinced that all attorneys have in good faith attempted to preserve the best interests of Yanira López-Cosme and have her properly compensated for the damages she has suffered.

Following Attorney Acosta-Ruiz's advice, this Magistrate-Judge **RECOMMENDS** that the stipulation entered by the parties be approved and Judgment be entered:

1. Dismissing with prejudice the claims presented by plaintiffs against co-defendants 414 Ponce De León, Inc., and North American Specialty Insurance Company.
2. Enter judgment against co-defendants ordering payment of the amounts fixed as per Agreement.

Civil No. 98-1551(SEC)

Page No. 4

3. Ordering the defendants to pay plaintiffs Marta Cosme and José A. López the total amount of \$183,000.00, and co-plaintiff Yanira López-Cosme the amount of \$2,000.00.

This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 504.3 of the Local Rules of Court. Any objections to the same must be specific and must be filed with the Clerk of Court **within three (3) days** of its receipt. Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific objections to the Report and Recommendation is a waiver of the right to review by the District Court. *United States v. Valencia-Copete*, 792 F.2d 4 (1st Cir. 1986); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980). The parties are advised that review of a Magistrate-Judge's Report and Recommendation by a District Judge does not necessarily confer entitlement as of right to a *de novo* hearing and does not permit consideration of issues not raised before the Magistrate-Judge. *Paterson-Leitch v. Massachusetts Elec.*, 840 F.2d 985 (1st Cir. 1988).

SO RECOMMENDED.

At San Juan, Puerto Rico, this 6th day October, 1999.



AIDA M. DELGADO-COLON
U.S. Magistrate-Judge